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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

MEREK, JOSEPH C

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 02/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/689,957

Applicant(s)

MELROSE

Examiner

Joseph C. Merek

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12/04/03.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 27-70 is/are pending in the application.
- 4a) Of the above claim(s) 43-46, 49, 50 and 55-63 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 27-42, 47, 48, 51-54 and 64-70 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 October 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2,3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of the election in Paper No. 4 is acknowledged.

The traversal was not based upon any grounds and is therefore is not persuasive.

The requirement is still deemed proper and is therefore made FINAL.

Claims 43-46, 49, 50, 55-63 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "the initiator region has an outward curvature which merges smoothly with said flexure region and progressively decreases from said initiator region to said flexure region" and "the flexing of the flexure region results in an outward curvature of the flexure region lessening" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 29, 69, and 70 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Regarding claim 29, it has not been adequately disclosed how the flexing of the flexure panel results in an outward curvature of the flexure region lessening. Regarding claim 69, it has not been adequately disclosed how the flattened portion is in the middle of the initiator region. The specification on page 14 states that the flattened portion of the initiator is on the end of the initiator. The claim is in direct conflict with the specification. Regarding claim 70, it has not been adequately disclosed how the initiator portion includes regions of opposite projection relative to said projecting portion.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 29, 69, and 70 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claim 29, it has not been adequately disclosed how the flexing of the flexure panel results in an outward curvature of the flexure region lessening. Regarding claim 69, it has not been

adequately disclosed how the flattened portion is in the middle of the initiator region. The specification on page 14 states that the flattened portion of the initiator is on the end of the initiator. The claim is in direct conflict with the specification. Regarding claim 70, it has not been adequately disclosed how the initiator portion includes regions of opposite projection relative to said projecting portion. It is not clear what is being claimed.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 27-42, 47, 48, 51-54, and 64-70 are rejected under 35 U.S.C. 102(b) as being anticipated by Brown et al (US 5,141,121). Regarding claim 27, see Fig. 3, where the vacuum panel is shown as 25 which projects away from the plane 26 and then

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inwardly from the plane when under vacuum by the dotted lines. 25 is the flexure region and the initiator region is the area between 25 and the hinge 27 and 25 extends from the plane to a greater extent than the initiator region. The regions merge together so that the initiator region can flex inwardly relative to the plane and cause the flexure region to progressively flex in response to increasing pressure change. The position of the flexure region will progress from an outward position to an inward position.

Regarding claim 28, see Fig. 3, where the flexure region projects outwardly in a transverse direction relative to the longitudinal axis. Regarding claim 29, the outward curvature of the flexure region lessens since the region is inwardly curved when under pressure. Regarding claim 30, see Fig. 3, where the merge between 24 and 25 is smooth. The curves are smooth. There are no sharp corners. Regarding claim 31, the claim language is met since as the initiator region progress to the flexure region the initiator region extends further away from the plane. The initiator progressively varies in outward extent. Regarding claim 32, see Fig. 3, where the flexure region varies in transversely radiating extent along an axis of the container. Regarding claim 33, see 31 above where this direction is transverse. Regarding claim 34, see Fig. 3, where the dotted lines show 25 extending inwardly. Regarding claims 35 and 36, see Fig. 3, where both the flexure region and the initiator invert to reverse in curvature in response to vacuum pressure. The curvature is reversed since first they are outward and then inward. Regarding claim 37, see above discussion of claims 35 and 36 where both the initiator and the flexure regions invert. Regarding claim 38, see Fig. 3, where the flex is inward due to lowering of pressure, i.e. vacuum. Regarding claim 39, the regions first

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project outward. Regarding claim 40, see Figs. 2 and 3, where the flexible panel is substantially arcuate where the initiator portion has less of a curvature than the projection portion. The panel is curved in two directions longitudinal and transverse. Regarding claim 41, the region near the hinge 27 does not project as far from the plane as those that are farther from the hinge as seen in Fig. 3. Regarding claim 42, the panel will be in an outward flex position when under pressure. Moreover, due to the heat and pressure the panel will move outward to some degree. Regarding claim 47, see Figs. 1-3, where 25 extends longitudinally away from the area closer to the hinge 27. The controlled movement is the snap from outward to inward. The panel will progress through different positions through the snap movement. The movement is progressive since the panel is continuously changing positions during its movement. See Fig. 4, where the panel is shown as having more than one position of inward movement by the dashed lines. Regarding claim 48, see discussion of claim 47 above. The initial outward projection of the initiator and the projection are predetermined. Regarding claim 51, see Figs. 2 and 3, where the region that extends around the hinge is in the same position before and after the movement of the panel. This is considered substantially inflexible. This area has reinforcement rib that extends completely around the hinge and panel as seen in Fig. 1. The rib, as seen in Fig. 1, has a pair of regions one on the left side of the panel and one on the right side of the panel. Regarding claims 52-54, the flexure and initiator regions are both substantially arcuate since they are curved as seen in Figs. 2 and 3. The regions are curved in both the longitudinal and transverse directions. Regarding claim 64, see Figs. 2 and 3, the connecting portion is

the part of the panel immediately inward of the hinge that connects the next inward portion the initiator region to the most outward extending portion the flexure region. The portion inward of the hinge flexes inwardly to move the initiator and the flexure regions. Regarding claim 65, see Figs. 1-3. See the above discussion of the flexure region and the initiator regions. Regarding claim 66, there are two panels one on either side of the container. Regarding claim 67, see Fig. 3 where there are horizontal lands on the front and rear of the container that separate the vacuum panels. These are land areas. Regarding claim 68, see Col. 2, lines 61-63. The initiator and the flexure regions vary in both the longitudinal and transverse directions. The outward extent of the panel is the least near the hinge line and progresses to a greatest extent to where the outward position of 25 is shown on Fig. 3. This progresses in both the transverse and longitudinal directions. They smoothly merge together. The motion of the initiator region is transferred to the flexure region in response to the increasing vacuum in the container. Regarding claim 69, as it is best understood, the portion of the panel that is just inward of the hinge is flattened. This extends between the substantially inflexible regions. Regarding claim 70, as it is best understood, the initiator has regions on either side of the projection as seen in Figs. 1 and 2. The initiator is the area around the largest projection that connects the hinge to the largest projection. There is initiator on both opposite sides of the projection.

Claims 27-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Valliencourt et al (US 5,341,946). Regarding claim 27, see Fig. 3, 7, and 9, where 43 are the vacuum panels are have a portion that extends away from the plane of a lesser

extent closer to 43b and to a greater extent closer to 43a. The panels invert as seen in Fig. 9. Regarding claim 28, the flexure region projects outwardly in a transverse direction relative to said longitudinal axis. Regarding claim 29, the flexure region moves to an inward position so that its outward curvature lessens. Regarding claim 30, the initiator merges smoothly with the flexure region. The regions vary in outward extent as seen in Fig. 3. Regarding claim 31, see Fig. 3. Regarding claim 32 and 33, see Fig. 4, where the outward extent varies transversely of panel 43, which includes the flexure region and the initiator region. Regarding claim 34, see Fig. 9, where the extension is inward after inversion. Regarding claim 35 and 36, see Fig. 9, where the regions invert. Regarding claim 37, see above discussion. Regarding claim 38, see Fig. 9. Regarding claim 39, see Fig. 3 where the projection is shown as outward. Regarding claim 40, see Figs. 3 and 4 where the panel is substantially arcuate since it has curved areas. Regarding claim 41, the initiator has regions of minimal projection relative to the projection portion as seen in Figs. 3 and 9. Regarding claim 42, the areas around the panels 43 and 44 will allow for some outward movement due to an increase in pressure. Regarding claim 47 and 48, see Fig. 9 where the movement is progressive. Regarding claims 52-54, see Figs. 3 and 4, the initiator and the flexure regions are substantially arcuate since each region has curved portions. Regarding claim 66, there is more than one panel. Regarding claim 67, the panels are spaced apart by land areas as seen in Fig. 1 as 38.

Claims 27-42, 47-48, 51-54, and 64-70 are rejected under 35 U.S.C. 102(b) as being anticipated by Provent (FR 2,187,617). Regarding claim 27, 37, 47, 48, 64, 65,

and 68, see Figs. 1-3, where the panel 2 moves from an outward position to an inward position in response to a decrease in pressure in the container. The panel is arcuate and the center is the flexure region, which has the greatest outward extent, and the initiator region is the area around the center, which has a lesser extent. The panel is arcuate in both the longitudinal and transverse directions. The curvature of the initiator region is lesser than that of the flexure region. The hot fill, blow molded and bi-axially oriented laminations do not require any structure that is not in the reference. Regarding the remaining claims, see the above discussions in relation to this reference.

Claims 27-42, 47, 48, 51-54, 64-70 are rejected under 35 U.S.C. 102(e) as being anticipated by Krishnakumar et al (US 5,971,184). Regarding claims 27, 37, 45, 47, 48, 64, 65, and 68, see Figs. 1-7, where the panel 56 is shown which is outward and then inverts inward. The area around the edge is the initiator and the center is the flexure. The initiator does not extend outward as much as the flexure. The flexure and the initiator regions curve in both the transverse and the longitudinal directions where the curvature of the initiator is less than that of the flexure. The container is bi-axially oriented, made for hot fill, and blow molded. The area around the panel is substantially inflexible as seen in Fig. 4 as item 52. This part 52 does not move during the change. The panels will respond gradually to the change in pressure since the containers cool gradually and the pressure change is gradual. See Fig. 4, where the progressive movement is shown. Regarding claim 29, the curvature of the flexure region decreases as you pass the center of the panel. The initiator panel surrounds the flexure panel. Regarding claim 69, as it is best understood, the area of the initiator that joins 54 as

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seen in Fig. 4, is flattened. This extends between the substantially inflexible regions 52. This occurs on all sides of the panels. Moreover, there are inflexible areas on all sides of the panels. Regarding claim 42, since the area around the panel move inward an increase in pressure will cause them to move outward. Regarding claim 70, as it is best understood, the initiator has projections on both sides of the flexure region. Regarding the remaining claims, see the above discussions in relation to this reference.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Nahill et al, Singier, Scheffer et al, Silvers et al, and Krishnakumar et al are all cited for teaching moving panels in containers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph C. Merek whose telephone number is (703) 305-0644. The examiner can normally be reached on Monday-Friday.

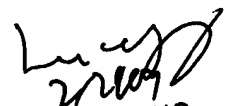
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (703) 308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3579 for regular communications and (703) 308-3579 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

JCM
February 23, 2003


LEE YOUNG
SUPERVISORY PATENT EXAMINER
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